

**EXHIBIT 5**  
**TO THE COMMENTS**  
**OF RELPROMAX ANTITRUST INC.**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA                    )  
  )  
Plaintiff,    )  
  )  
v.   )  
  )  
MICROSOFT CORPORATION,                    )  
  )  
Defendant.                                        )  
\_\_\_\_\_)

CIVIL ACTION NO. 98-1232 (CKK)

STATE OF NEW YORK *ex rel.*                    )  
Attorney General ELIOT SPITZER, *et al.*,    )  
  )  
Plaintiffs,                                        )  
  )  
v.   )  
  )  
MICROSOFT CORPORATION,                    )  
  )  
Defendant.                                        )  
\_\_\_\_\_)

CIVIL ACTION NO. 98-1233 (CKK)

Next Court Deadline:  
March 4, 2002  
Pre-hearing Conference

**DECLARATION OF BRIAN DAUTCH**

1.           My name is Brian Dautch. I am a law clerk for Peter Peckarsky, Esq. I have personal knowledge of the facts testified to below and if called as a witness could testify to those facts. I am over the age of twenty-one (21) years old.
2.           On January 25, 2002, I placed a telephone call to 800-915-3355 to contact the Dell Computer Corporation ("Dell"). I spoke with Ray at extension 61468. Ray refused to state his last name. I asked what the price was for a Dell Dimension Model 8200 desktop personal computer. Ray said the price was \$1,577. I asked what operating system was on the machine

at that price. Ray said the operating systems was a Microsoft Windows XP operating system and advised that I could have the Home or Professional versions of the operating system. I asked whether I could buy the same desktop computer from Dell with any other operating system. Ray said that Dell would sell its desktop personal computers only with a version of the Microsoft Windows XP operating system (Home or Professional). Ray said that Dell would not sell a desktop personal computer without an operating system. If Dell were willing to sell me a desktop personal computer without an operating system I would be able to endeavor to arrange to use an operating system made by a software vendor other than Microsoft on the Dell desktop personal computer.

3. On January 27, 2002, I placed a telephone call to 800-915-3355 to contact Dell again. I spoke with Jack at extension 58680. Jack refused to state his last name. I asked what the price was for a Dell Inspiron Model 8100 laptop personal computer. Jack said the price was \$1,379. I asked what operating system was on the machine at that price. Jack said the operating system would be my choice of either a Microsoft Windows XP operating system (Home or Professional version) or a Microsoft Windows 2000 operating system. I asked whether I could buy the same laptop computer hardware from Dell with any other operating systems. Jack said that Dell would sell its laptop personal computers only with a version of the Microsoft Windows XP operating system (Home or Professional) or Windows 2000. Jack said that Dell would not sell a laptop personal computer without an operating system. If Dell were willing to sell me a laptop personal computer without an operating system I would be able to endeavor to arrange to use an operating system made by a software vendor other than Microsoft on the Dell laptop personal computer.

4. On January 25, 2002, I placed a telephone call to 800-888-0220 to contact the

Compaq Computer Corporation ("Compaq"). I spoke with Bob at extension 21679. Bob refused to state his last name. I asked what the price was for a Compaq Presario Model 8000 desktop personal computer. Bob said the price was \$1,510. I asked what operating system was on the machine at that price. Bob said the operating systems was a Microsoft Windows XP operating system and advised that I could have the Home or Professional versions of the operating system. I asked whether I could buy the same desktop computer from Compaq with any other operating system. Bob said that Compaq would sell its desktop personal computers only with a version of the Microsoft Windows XP operating system (Home or Professional). Bob said that Compaq would not sell a desktop personal computer without an operating system. If Compaq were willing to sell me a desktop personal computer without an operating system I would be able to endeavor to arrange to use an operating system made by a software vendor other than Microsoft on the Compaq desktop personal computer.

5. On January 27, 2002, I placed a telephone call to 800-888-0220 to contact Compaq again. I spoke with Tim at extension 5249. Tim refused to state his last name. I asked what the price was for a Compaq Presario Model 2700 laptop personal computer. Tim said the price was \$1,299. I asked what operating system was on the machine at that price. Tim said the operating system would be my choice of either a Microsoft Windows XP operating system (Home or Professional version) or a Microsoft Windows 2000 operating system . I asked whether I could buy the same laptop computer hardware from Compaq with any other operating systems. Tim said that Compaq would sell its laptop personal computers only with a version of the Microsoft Windows XP operating system (Home or Professional) or Windows 2000. Tim said that Compaq would not sell a laptop personal computer without

an operating system. If Compaq were willing to sell me a laptop personal computer without an operating system I would be able to endeavor to arrange to use an operating system made by a software vendor other than Microsoft on the Compaq laptop personal computer.

6. On January 25, 2002, I placed a telephone call to 888-999-4747 to contact the Hewlett-Packard Company ("HP"). I spoke with Ann at extension 3721. Ann refused to state her last name. I asked what the price was for an HP Pavilion Model 7966 desktop personal computer. Ann said the price was \$1,999.99. I asked what operating system was on the machine at that price. Ann said the operating systems was a Microsoft Windows XP operating system and advised that I could have the Home or Professional versions of the operating system. I asked whether I could buy the same computer hardware from HP with any other operating system. Ann said that HP would sell its desktop personal computers only with a version of the Microsoft Windows XP operating system (Home or Professional). Ann said that Dell would not sell a desktop personal computer without an operating system. If HP were willing to sell me a desktop personal computer without an operating system I would be able to endeavor to arrange to use an operating system made by a software vendor other than Microsoft on the HP desktop personal computer.

7. On January 27, 2002, I placed a telephone call to 888-999-4747 to contact HP again. I spoke with Jackie at extension 3707. Jackie refused to state her last name. I asked what the price was for an HP Pavilion Notebook Model N5310 laptop personal computer. Jackie said the price was \$1,349. I asked what operating system was on the machine at that price. Jackie said the operating systems was a Microsoft Windows XP operating system (either Home or Professional version or Microsoft Windows Millenium or Microsoft Windows 2000 or Microsoft Windows 98. I asked whether I could buy the same computer hardware from HP


with any other operating system. Jackie said that HP would sell its desktop personal computers only with a version of the Microsoft Windows XP or Microsoft Windows Millenium or Microsoft Windows 2000 or Microsoft Windows 98 operating system s. Jackie said that HP would not sell a laptop personal computer without an operating system. If HP were willing to sell me a laptop personal computer without an operating system I would be able to endeavor to arrange to use an operating system made by a software vendor other than Microsoft on the HP laptop personal computer.

8. On January 25, 2002, I placed a telephone call to 888-746-7426 to contact International Business Machine ("IBM"). I spoke with Andy at extension 37229. Andy refused to state his last name. I asked what the price was for an IBM Model M67922EU desktop personal computer. Andy said the price was \$1,289. I asked what operating system was on the machine at that price. Andy said the operating systems was a Microsoft Windows XP operating system and advised that I could have the Home or Professional versions of the operating system. I asked whether I could buy the same computer hardware from IBM with any other operating system. Andy said that IBM would sell its desktop personal computers only with a version of the Microsoft Windows XP operating system (Home or Professional). Andy said that IBM would not sell a desktop personal computer without an operating system. If IBM were willing to sell me a desktop personal computer without an operating system I would be able to endeavor to arrange to use an operating system made by a software vendor other than Microsoft on the IBM desktop personal computer.

9. On January 27, 2002, I placed a telephone call to 888-746-7426 to contact International Business Machine ("IBM"). I spoke with Jim at extension 37289. Jim refused to state his last name. I asked what the price was for an IBM Thinkpad Model 265620U

laptop personal computer. Jim said the price was \$1,099. I asked what operating system was on the machine at that price. Jim said the operating system was a Microsoft Windows XP operating system (Home or Professional versions) or Windows 2000. I asked whether I could buy the same laptop computer from IBM with any other operating system. Jim said that IBM would sell its laptop personal computers only with a version of the Microsoft Windows XP operating system (Home or Professional) or Windows 2000 operating system. Jim said that IBM would not sell a laptop personal computer without an operating system. If IBM were willing to sell me a laptop personal computer without an operating system I would be able to endeavor to arrange to use an operating system made by a software vendor other than Microsoft on the IBM laptop personal computer.

I declare under penalty of perjury that the foregoing is true and correct, executed in Washington, D.C., on January 27, 2002.

  
Brian Dautch